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T. C. Memo. 1986-265

UNITED STATES TAX COURT

DEAN E. SCHADE, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 29759-82. Filed July 1, 1986.

Rogelio A. Villageliu, for the respondent.

MEMORANDUM OPINION

WILBUR, Judge: Respondent determined the following Federal income tax deficiencies and additions to tax:

Year	Deficiency	Additions to Tax Sec. 6651(a)[1]	Sec. 6653(a)
1979	$7,253.43	$ 623.07	$362.67
1980	4,718.96	1,178.06	235.95

[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect for the years in issue.

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The only issue remaining for decision in this case is whether damages should be awarded to the United States pursuant to section 6673.

Petitioner resided in Cedar Rapids, Iowa, when he filed the petition in this case. In addition to disputing all the determinations made by respondent in his statutory notice of deficiency, the petition alleges that respondent's determination of petitioner's gross income was based on an "arbitrary assumption" without "verification, substantiation or basis." It is further alleged that respondent denied petitioner legitimate expenses and exemptions and arbitrarily imposed additions to the tax. However, there are no facts alleged which support petitioner's claims or naked assertions.

Petitioner was invited to meet with respondent's counsel on November 25, 1983, in order to prepare a stipulation of facts but he never responded to the invitation and subsequently failed to appear for the conference on the scheduled date. A second conference was scheduled by respondent's counsel for August 23, 1984, but petitioner again neglected to respond to the invitation and failed to appear for the conference.

After the Court issued the notice of trial in this case, respondent sent petitioner a proposed stipulation of facts which he ignored. Pursuant to Rule 91(f) of the Tax Court Rules

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of Practice and Procedure,[2] this Court issued an Order to Show Cause requiring petitioner to show why respondent's proposed stipulation of facts should not be accepted. Petitioner did not respond and he failed to appear for the hearing on October 3, 1984. Consequently, the Court's Order to Show Cause was made absolute and the facts contained in respondent's proposed stipulation were deemed admitted.

When the case was called at the trial session in Des Moines, Iowa, petitioner did not appear to prosecute his case. His failure to produce evidence, with regard to issues as to which he bears the burden of proof, led this Court to grant respondent's motion to dismiss pursuant to Rule 123 for failure to properly prosecute. See also Rule 149. Therefore, the deficiencies and additions to tax determined by respondent were sustained.

At the trial session, respondent filed a motion for an award of damages in the amount of $500 pursuant to section 6673.

We will award damages of $500 to the United States pursuant to section 6673,[3] which provides as follows:

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2 All Rule references are to the Tax Court Rules of Practice and Procedure.

3 The amount of damages that can be awarded pursuant to section 6673 was increased from $500 to $5,000 as part of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 574. New section 6673 is applicable to any action or proceeding in the Tax Court commenced after December 31, 1982 or pending in the United States Tax Court on the day which is 120 days after July 18, 1984.

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Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary and shall be collected as a part of the tax.

This is clearly a situation where petitioner filed forms that failed to disclose any information or data from which respondent could compute and assess petitioner's tax liability for the years 1979 and 1980. They do not constitute income tax returns. Cupp v. Commissioner, 65 T.C. 69, 79 (1975), affd. by order 559 F.2d 1207 (3d Cir. 1977). Furthermore, petitioner's blanket assertion of the privilege against self-incrimination on his Forms 1040 as grounds for refusing to disclose any information is rejected. Thompson v. Commissioner, 78 T.C. 558, 562 (1982). His failure to stipulate facts, respond to the Court's orders and appear at the trial to prosecute his case, when considered along with his frivolous and groundless petition, convinces us that this proceeding was instituted and maintained primarily for delay. Petitioner was well aware that the income which he received was reportable as gross income and that he was required to file income tax returns. Petitioner knew that the arguments he asserted were frivolous, but nevertheless proceeded to advance them. May v. Commissioner, 752 F.2d 1301 (8th Cir.

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1985), affg. a Memorandum Opinion of this Court; Abrams v. Commissioner, 82 T.C. 403, 406-413 (1984). Accordingly, we think damages are appropriate and respondent's motion will be granted.

An order and decision will be entered.

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T. C. Memo. 1986-266

UNITED STATES TAX COURT

RICHARD S. McMAINS AND SUZANNE L. McMAINS, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 24023-84. Filed July 1, 1986.

Richard S. McMains, pro se.

James J. Everett, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GOFFE, Judge: The Commissioner determined deficiencies in petitioners' Federal income tax liability and additions to tax as follows:

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Taxable Year	Deficiency	Additions to Tax Sec. 6653(a)(1)[1]	Additions to Tax Sec. 6653(a)(2)
1979	$3,451	$172.55	-0-
1980	3,418	170.90	-0-
1981	2,941	147.05	50% of interest due on $2,941

The issues presented are: (1) whether petitioners are entitled to deduct alleged charitable contributions; (2) whether petitioners failed to report income; (3) whether the period of limitations expired for the taxable year 1980; (4) whether petitioners are liable for additions to tax under sections 6653(a)(1) and 6653(a)(2); and (5) whether the imposition of damages under section 6673 is proper.

FINDINGS OF FACT

Some of the facts have been stipulated. The stipulation of facts and the attached exhibits are incorporated by this reference.

Richard S. and Suzanne L. McMains (petitioners) resided in Sierra Vista, Arizona, during the taxable years in issue and at the time they filed their petition in this case.

Sometime prior to the taxable years in issue petitioners applied for and received a "charter" from the Universal Life Church, Inc., of Modesto, California (hereinafter referred to as ULC-Modesto).

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[1] All section references are to the Internal Revenue Code of 1954, as amended and in effect during the taxable years in question, and all Rule references are to the Tax Court Rules of Practice and Procedure.

On November 28, 1978, petitioners executed a quit claim deed to certain real property including their residence to "The Universal Life Church, Charter Number 24564, J-TAG FARM" (hereinafter referred to as ULC No. 24564). The property was encumbered by a mortgage upon which petitioners remained liable. ULC No. 24564 had no church building, but its mailing address was given as "Box 475 Moson Road, Sierra Vista, Arizona 85635," which represented no more than a mailbox on a rural postal route next to petitioners' mailbox labeled "Box 474 Moson Road." At all times subsequent to the execution of the quit claim deed, petitioners continued to use this property as their residence.

During the taxable years in issue petitioners deposited cash or checks drawn on their personal account into a checking account established for ULC No. 24564 at the Arizona Bank. Petitioners also periodically deposited in the ULC No. 24564 account amounts received from third parties. These deposits into the ULC No. 24564 account from sources other than petitioners totaled $8,407.10 for the taxable year 1979, $5,255 for the taxable year 1980, and $1,695 for the taxable year 1981. Petitioners made no payments directly to ULC-Modesto.

Petitioners were the only persons authorized to write checks on the ULC No. 24564 account. Throughout the years in issue checks were drawn on this account to pay personal expenses of petitioners including mortgage payments on the property transferred to ULC No. 24564, telephone, and automobile expenses, as well as cash payments to petitioner Suzanne L. McMains.

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Pursuant to an examination of petitioners' Federal income tax returns, on December 16, 1982, the Commissioner issued a third-party summons to the Arizona Bank directing it to produce for examination books, papers, records and other data concerning the ULC No. 24564 account. Petitioners notified the bank that it should not comply with the summons. After the bank failed to comply with the summons, the Commissioner instituted a summons enforcement action in the U.S. District Court for the District of Arizona on January 9, 1984. Thirty days later, on February 8, 1984, the District Court judge issued an order requiring Arizona Bank to produce the documents specified in the Commissioner's summons.

On May 9, 1984, the Commissioner issued a statutory notice of deficiency in which he determined deficiencies in petitioners' Federal income tax liability for the taxable years 1979, 1980, and 1981. Among the determinations made was that petitioners' charitable contribution deduction must be reduced in the amounts of $9,167 for 1979, $11,441 for 1980, and $10,936 for 1981. The Commissioner also determined that petitioners had unreported income in the amounts of $8,407, $5,455, and $4,095 for the taxable years 1979, 1980, and 1981, respectively. The determination of unreported income was based upon deposits into the ULC No. 24564 account from sources other than petitioners and upon certain unidentified deposits in petitioners' personal bank account. Finally, the Commissioner imposed additions to tax under sections 6653(a)(1) and 6653(a)(2).

Respondent's counsel sent petitioners a letter dated May 1, 1985, enclosing copies of several cases, which involved purported charitable contributions to the Universal Life Church and in which this Court awarded damages under section 6673.[2] At the beginning of the trial of this case, respondent moved to impose damages under section 6673.

OPINION

Issue 1. Charitable Deductions

Section 170(c) allows a deduction for

> a contribution or gift to or for the use of--
>
> * * *
>
> (2) A corporation, trust, or community chest, fund, or foundation--
>
> * * *
>
> (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes * * *;
>
> (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * *

The burden of proving entitlement to a deduction is on petitioners. Deputy v. du Pont, 308 U.S. 488 (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435 (1934); Rule 142(a). Thus, petitioners must prove that all requirements of section 170

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2 Booker v. Commissioner, T.C. Memo. 1985-93; Lane v. Commissioner, T.C. Memo. 1985-89; Rager v. Commissioner, T.C. Memo. 1984-563; Lee v. Commissioner, T.C. Memo. 1984-562; Ruberto v. Commissioner, T.C. Memo. 1984-557; Moriarty v. Commissioner, T.C. Memo. 1984-539; Swanson v. Commissioner, T.C. Memo. 1984-524; Snodgrass v. Commissioner, T.C. Memo. 1984-435; Clark v. Commissioner, T.C. Memo. 1984-326.

have been satisfied in order to obtain a deduction for the funds they transferred to the bank account of their Universal Life Church chapter. Based upon our review of the record, we conclude that petitioners have fallen woefully short of satisfying this burden.

The main thrust of petitioners' arguments in support of the claimed deductions was that their deposits to the bank account of ULC No. 24564 actually represented contributions to ULC-Modesto, an organization possessing a charitable exemption under section 501(c)(3) during the taxable years in issue and listed in respondent's publication No. 78.[3] Although respondent apparently concedes that payments were made into the account of ULC No. 24564, petitioners have introduced no admissible evidence showing that the amounts deposited in the account were controlled in any way by ULC-Modesto. We merely have the self-serving, uncorroborated testimony of petitioner Richard S. McMains.[4] Therefore, petitioners have failed to prove they made

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[3] Petitioners do not appear to be directly claiming that the specific exemption enjoyed during the taxable years in issue by ULC-Modesto (see Universal Life Church, Inc. v. United States, 372 F. Supp. 770 (E.D. Cal. 1974)) constitutes a group exemption for ULC-Modesto and all of its chapters. Cf. Davis v. Commissioner, 81 T.C. 806, 815 (1983), affd. without published opinion 767 F.2d 931 (9th Cir. 1985).

[4] Petitioners attempted to introduce into evidence receipts and annual statements prepared by ULC-Modesto personnel purporting to show the amounts petitioners donated to ULC-Modesto during the taxable years in issue. On respondent's objection, we excluded these documents as inadmissible hearsay as the ULC-Modesto personnel who prepared them were not called to testify and the documents did not fall within any exception to the hearsay rule. Fed. R. Evid. 802, 803, 804; see Davis v. Commissioner, 81 T.C. at 814.

contributions to a qualified tax-exempt organization.

Furthermore, petitioners have failed to show that no part of the income of ULC No. 24564 inured to their personal benefit. Sec. 170(c)(2)(C); Davis v. Commissioner, 81 T.C. 806, 818 (1983), affd. without published opinion 767 F.2d 931 (9th Cir. 1985); McGahen v. Commissioner, 76 T.C. 468, 482-483 (1981), affd. without published opinion 720 F.2d 664 (3d Cir. 1983). We are convinced that, in fact, the contrary is true. Petitioners continued to reside on the same property before and after the execution of the quit claim deed. Petitioners' produced no evidence to support their assertion that ULC-Modesto required them to remain to manage "church" property. More convincingly, petitioners were the sole signatories over the ULC No. 24564 bank account out of which personal expenses were regularly paid.

Based upon the foregoing, we find for respondent on this issue.

Issue 2. Unreported Income

The Commissioner determined that petitioners failed to report income based upon deposits made into their personal bank account and the ULC No. 24564 bank account. Petitioners' sole evidence concerning this aspect of the Commissioner's determination was petitioner Richard S. McMains' assertion that one deposit of $2,000 into their personal account was not income, but rather a gift from a friend, whom he refused to identify. Petitioners failed to introduce any other evidence to refute the determination of unreported income. It is clear that petitioners

received income but attempted to avoid the taxation of the income by depositing it in the bank account of their chapter of the Universal Life Church. Accordingly, we find for respondent on this issue.

Issue 3. Statute of Limitations

Petitioners' claim that the applicable period for assessment for the taxable year 1980 expired prior to the mailing of the statutory notice on May 9, 1984. Section 6501(a) provides that the Commissioner must assess a deficiency within 3 years after the return to which the assessment relates has been filed. Under section 6501(b)(1) a tax return is deemed filed on the later of the date it is actually filed or the last day for timely filing. Therefore, petitioners' return is deemed filed on April 15, 1981. Accordingly, the Commissioner only had until April 15, 1984, to assess a deficiency with respect to this return or issue a statutory notice of deficiency, which would suspend the running of the period of limitations. Sec. 6503(a)(1). However, section 7609(e) provides that if any action is brought to enforce a third-party summons, the applicable period of limitations will be suspended for the period, including appeals, that such enforcement action is pending. See sec. 301.7609-5, Proced. & Admin. Regs.

Respondent filed a petition in U.S. District Court to enforce a third-party summons issued to the bank where the ULC No. 24564 bank account was maintained on January 9, 1984. On

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February 8, 1984, the District Court judge issued an order enforcing the summons. As a result the running of the period of limitations was suspended for 30 days, which gave the Commissioner until at least May 15, 1984, to mail the statutory notice of deficiency. The mailing of the notice of deficiency, on May 9, 1984, was, therefore, timely.

Issue 4. Additions to Tax Under Section 6653(a)(1) and 6653(a)(2)

The Commissioner determined that the additions to tax under sections 6653(a)(1) and 6653(a)(2)[5] were appropriate because petitioners underpaid their Federal income tax liabilities due to negligence or intentional disregard of rules or regulations. The Commissioner's determination is presumptively correct and will be upheld unless petitioners rebut the presumption. McGahen v. Commissioner, 76 T.C. at 484. Petitioners have failed to carry this burden and we find for respondent upon this issue.

Issue 5. Damages Under Section 6673

The final issue for decision is whether damages should be awarded to the United States pursuant to section 6673. Section 6673 provides for damages to be awarded to the United States in an amount not in excess of $5,000 whenever it appears that a

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[5] Sec. 6653(a)(2), which imposes an addition to tax equal to 50 percent of the interest due on an underpayment of tax whenever the addition to tax under sec. 6653(a)(1) is also appropriate, was added to the Code by sec. 722(b)(1) of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, 95 Stat. 172, 342, effective for taxes the last date for the payment of which is after December 31, 1981.

taxpayer has instituted or maintained proceedings before this Court primarily for delay or where the taxpayer's position is frivolous or groundless. As we have stated, this Court has been faced with numerous cases, such as this one, concerning attempts by taxpayers to use the "pretext of a church to avoid paying their fair share of taxes, * * * [and to] resort to the courts in a shameless attempt to vindicate themselves." Miedaner v. Commissioner, 81 T.C. 272, 282 (1983). Prior to the trial of this case, respondent provided petitioners with copies of opinions of this Court in which deductions for contributions to similar self-described churches were disallowed. Petitioners must have known that their contentions regarding deductions for payments to their chapter of the Universal Life Church were baseless, yet they continued to press them. Petitioners herein have abused the processes of this Court and wasted its resources. In response to respondent's request for damages, petitioners simply contend that section 6673 is unconstitutional because it penalizes them for exercising their right to seek redress of their grievances. This argument has no merit. Larsen v. Commissioner, 765 F.2d 939, 941 (9th Cir. 1985), affg. per curiam an unreported order of this Court. On this record we conclude that the proceedings were instituted and maintained primarily for delay and that petitioners' claims for deductions for

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contributions to a qualified tax-exempt organization are frivolous or groundless and accordingly award damages to the United States under section 6673 in the amount of $1,500.

To reflect the foregoing,

Decision will be entered for the respondent.

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